

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROGER BOWENS	:	CIVIL ACTION
	:	
v.	:	
	:	
T.B. WOODS, INC.	:	NO. 98-1255

MEMORANDUM AND ORDER

BECHTLE, J.

JUNE , 1998

Presently before the court is plaintiff Roger Bowens' ("Bowens") motions to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a)(1) and for appointment of counsel under 42 U.S.C. § 2000e-5(f)(1). For the reasons set forth below, the court will grant the motion to proceed in forma pauperis and deny the motion to appoint counsel.

I. DISCUSSION

A. In Forma Pauperis

The decision whether to grant or deny a motion requesting to proceed in forma pauperis under 28 U.S.C. § 1915 rests in the discretion of the district court. Jones v. Zimmerman, 752 F.2d 76, 78 (3d Cir. 1985). The purpose of § 1915 "is to provide an entre, not a barrier, to the indigent seeking relief in the federal court." Souder v. McGuire, 516 F.2d 820, 823 (3d Cir. 1975). Factors to apply in making the determination include

whether the plaintiff owns any real property, whether he is employed, whether he is the recipient of a pension and the number of dependents that rely on him for support. In re Koren, 176 B.R. 740, 743 (E.D. Pa. 1995).

As required under § 1915(a)(1), Bowens submitted to the court a sworn affidavit that included a statement of all the assets he possesses and his general financial position.¹ In his affidavit, Bowens states that he is currently unemployed. According to the affidavit, his primary source of income was unemployment compensation which was exhausted in April of 1998. Bowens also states that he does not have any cash on hand or any money in checking or savings accounts. Additionally, he avers that he has a daughter who is dependent upon him for support in the amount of \$200.00 per month. Based on Bowens' affidavit, the payment of the \$150.00 filing fee to commence an action in the district court would impose a hardship upon his financial situation. The court will grant his motion to proceed in forma pauperis.

B. Appointment of Counsel

There is no constitutional or statutory right to the appointment of counsel in a civil action. Parham v. Johnson, 126 F.3d 454 (3d. Cir. 1997). In cases brought under Title VII of

1. It is noted that the in forma pauperis statute underwent substantial changes as a result of the Prison Litigation Reform Act. However, those amendments, such as requiring information beyond the affidavit of assets, do not affect suits by non-prisoners and therefore have no bearing on this case. 28 U.S.C. § 1915.

the Civil Rights Act of 1964², "in such circumstances the court may deem just, the court may appoint an attorney." 42 U.S.C. § 2000e-5(f)(1). While Title VII gives plaintiffs the opportunity to request representation, it does not create a statutory right to have counsel actually appointed. Poindexter v. Federal Bureau of Investigation, 737 F.2d 1173, 1179 (D.C. Cir. 1984). In acting on such requests, this court recognizes that appointment of an attorney may be essential for a plaintiff to fulfill "the role of a private attorney general, vindicating a policy of the highest priority." Id. at 1183 (citations omitted).

The court should consider four factors when evaluating motions for appointment of counsel in Title VII cases: (1) plaintiff's ability to afford counsel; (2) plaintiff's diligence in searching for counsel; (3) the merits of plaintiff's case and (4) the plaintiff's capacity to present his or her case without the assistance of counsel. Castner v. Colorado Springs Cablevision, 979 F.2d 1417 (10th Cir. 1992); Spanos v. Penn Cent. Transp. Co., 470 F.2d 806 (3d Cir. 1972); Akselrad v. City of Philadelphia, No. 96-5192, 1997 WL 34698 (E.D. Pa. Jan. 29, 1997).

1. Plaintiff's Ability to Afford Counsel

As discussed above, Bowens' affidavit indicates that he can not afford counsel. This initial factor weighs in favor of appointing counsel.

2. 42 U.S.C. § 2000e, et seq.

2. Plaintiff's Diligence in Searching for Counsel

Before a court may appoint counsel under Title VII, "the Plaintiff must make a reasonably diligent effort under the circumstances to obtain counsel." Akselrad, 1997 WL 34698 at *2. Bowens states that he has sought representation with at least three private law firms and a legal aid organization without success. Bowens also received a list of attorneys from the Equal Employment Opportunity Commission. He states that he contacted four or five firms on the list and that they were willing to take the case. However, he further states that because of financial hardship he could not retain representation from any of these firms. Under the circumstances, the court finds that Bowens has made a reasonable effort to obtain counsel.

3. The Merits of Plaintiff's Case

In evaluating the merits of a plaintiffs' case to determine whether to appoint counsel in an action brought under Title VII, the court should first "analyze whether or not [the complaint] raises issues under a recognized legal theory." Akselrad, 1997 WL 34698 at *3 (citing Tatum v. Community Bank, 866 F. Supp. 988, 995 (E.D. Tex. 1994)). If the allegations "are not clearly baseless, and if proven would support a recognized theory of recovery" the plaintiff should have a "full opportunity to pursue the action." Id.

Based on the affidavit, Bowens is alleging that his former employer, T.B. Woods, Inc., discriminated against him on the

basis of race in violation of Title VII of the Civil Rights Act of 1964. The claim has two parts. First, Bowens alleges that the employer enforced its absentee policy in a stricter manner against him than it did against white male employees. Second, Bowens alleges that management tolerated a discriminatory atmosphere. As examples, Bowens alleges that a counselor appeared in a "Klu Klux Klan" type of hood, called him a name and left the hood at his work station. Bowens also alleges that he heard numerous racial slurs and was nicknamed "yard ape" by some of his co-workers. Bowens further alleges that management did not "ameliorate" this hostile work environment. Reading the allegations in the light most favorable to the plaintiff, these claims "rise above the standard of frivolousness" and, if proven, would support a recovery under a recognized legal theory. Akselrad, 1997 WL 34698 at *3. However, an attorney is not always required in order for a plaintiff to receive a "full opportunity" to present his or her claims. Akselrad, 1997 WL 34698 at *3-4 (denying appointment of counsel while finding plaintiff stated potentially meritorious claims). The stating of potentially meritorious claims is not itself determinative. Id.

4. Plaintiff's Capacity to Present Case Without the Assistance of Counsel

The court must also evaluate whether "it appears that a plaintiff has a meritorious claim that he cannot adequately pursue pro se." Akselrad, 1997 WL 34698 at *4 (citing Spanos v. Penn Cent. Transp. Co., 470 F.2d 806 (3d Cir. 1972)). Based on

his affidavit and other submissions to the court, Bowens appears to be literate and educated. Additionally, the case does not appear to be so complex that Bowens cannot adequately present his case without the assistance of counsel. Further, the court does not foresee "the need for expert testimony or extensive or complex discovery." Washington v. Embassy Suites, No. 94-1748, 1994 WL 161378 (E.D. Pa. April 29, 1994). Based on the submissions presently before the court, it appears that Bowens can adequately pursue his Title VII claims without counsel. This factor weighs against appointment of counsel at this time.

5. Balancing the Factors

In addition to the factors set forth above, the court must be cautious in appointing counsel because "volunteer lawyer time is a precious commodity." Tabron v. Grace, 6 F.3d 147, 157 (3d Cir. 1993)(quoting Cooper v. Sargenti Co., 877 F.2d 170, 172 (2d Cir. 1989)). Based on the balancing of the above discussed factors as applied to this case, the court will not appoint counsel because it appears that Bowens can adequately pursue his claims pro se.

II. CONCLUSION

For the foregoing reasons, the court will grant Bowens' motion to proceed in forma pauperis and will deny his motion for appointment of counsel. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROGER BOWENS

v.

T.B. WOODS, INC.

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CIVIL ACTION

NO. 98-1255

ORDER

AND NOW, TO WIT, this day of June, 1998, upon
consideration of Roger Bowens' ("Bowens") motions to proceed in
forma pauperis and for appointment of counsel IT IS ORDERED that:

- (1) Bowens' motion to proceed in forma pauperis is GRANTED.
- (2) Bowens' motion for appointment of counsel is DENIED.

LOUIS C. BECHTLE, J.